

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

vs.

DEPARTMENT OF THE TREASURY,

Defendant.

NO.

COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF

Plaintiff Microsoft Corporation (“Plaintiff” or “Microsoft”) brings this action for declaratory and injunctive relief under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 *et seq.*, and complains as follows:

**INTRODUCTION**

1. Plaintiff seeks to compel the disclosure of records that were unlawfully withheld by the Department of the Treasury (“Defendant” or “Treasury”).

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COMPLAINT FOR DECLARATORY AND  
INJUNCTIVE RELIEF - 1

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**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this case pursuant to 5 U.S.C. § 552(a)(4)(B).  
The Court also has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702.

3. Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B).

**PARTIES**

4. Plaintiff is a Washington corporation with its principal place of business located in Redmond, Washington.

5. Defendant is an agency of the United States government within the meaning of 5 U.S.C. § 552(f)(1), headquartered in Washington, D.C., that has possession and control over the records that Plaintiff seeks under the FOIA.

**STATUTORY FRAMEWORK**

6. The FOIA requires federal government agencies to release requested agency records to the public unless one or more specific statutory exemptions apply. 5 U.S.C. § 552(a)(3)(A).

7. Records are agency records subject to the FOIA if the agency created or obtained them and the agency controlled them at the time the FOIA request is made. *U.S. Dep't of Justice v. Tax Analysts*, 492 U.S. 136, 144-45 (1989).

8. An agency has twenty (20) working days after receipt of a FOIA request in which to determine whether to comply with the request. 5 U.S.C. § 552(a)(6)(A)(i). If the agency fails to respond, this Court has jurisdiction upon receipt of a complaint to review, *de novo*, the agency's failure to respond and order the production of any agency records improperly withheld from the requester. 5 U.S.C. § 552(a)(4)(B).

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**STATEMENT OF FACTS**

**A. Introduction**

9. Defendant is an executive department of the United States Government.

10. Defendant is organized into two major components: the departmental offices and the operating bureaus. The departmental offices are primarily responsible for the formulation of policy and management, while the operating bureaus carry out the specific operations assigned to Defendant.

11. The Office of Tax Policy (“OTP”), one of Defendant’s departmental offices, develops and implements tax policies and programs, reviews regulations and rulings to administer the Internal Revenue Code, negotiates tax treaties, and provides economic and legal policy analysis for domestic and international tax policy decisions. OTP also provides estimates for the President’s budget, fiscal policy decisions, and cash management decisions.

12. The Internal Revenue Service (“IRS”), the largest of Defendant’s operating bureaus, is responsible for the administration and the enforcement of the federal tax laws.

13. The IRS is presently conducting examinations of Plaintiff’s federal income tax returns for the tax years ended June 30, 2004 through June 30, 2009 (the “Examinations”).

**B. The Temporary Treasury Regulations**

14. On June 18, 2014, Treasury and the IRS issued temporary regulations purporting to allow IRS contractors to question witnesses pursuant to summons. T.D. 9669, 79 Fed. Reg. 34625 (Jun. 18, 2014) (“Treas. Reg. § 301.7602-1T”).

**C. Plaintiff’s FOIA Request**

15. On July 27, 2015, Plaintiff’s counsel prepared and transmitted to Defendant a FOIA request, on Plaintiff’s behalf (“Plaintiff’s FOIA Request”). A true and correct copy of Plaintiff’s FOIA Request is attached hereto as Exhibit I. Plaintiff’s FOIA Request sought:

- (1) All pre-publication documents provided to the Treasury Executive Secretary and/or his or her staff regarding Temp. Treas. Reg. § 301-7602-1T, RIN 1545-BM25, contained in Treasury Decision 9669, published in the Federal Register at 79 Fed. Reg. 34625 (Jun. 18, 2014), including but not limited to all briefing materials.
- (2) All pre-publication documents prepared by and/or distributed within Treasury regarding Temp. Treas. Reg. § 301-7602-1T, RIN 1545-BM25, contained in Treasury Decision 9669, published in the Federal Register at 79 Fed. Reg. 34625 (Jun. 18, 2014), including but not limited to weekly memoranda regarding the status of the guidance item.
- (3) All documents prepared by and/or provided to Treasury's Office of Legislative Affairs regarding Temp. Treas. Reg. § 301-7602-1T, RIN 1545-BM25, contained in Treasury Decision 9669, published in the Federal Register at 79 Fed. Reg. 34625 (Jun. 18, 2014).

16. Plaintiff's FOIA Request was received by the appropriate component of Treasury by no later than July 31, 2015.

17. To date, Defendant has not contacted Plaintiff regarding Plaintiff's FOIA Request.

18. To date, Defendant has not responded to Plaintiff's FOIA Request.

19. The statutory deadline for Defendant to respond to Plaintiff's FOIA Request, August 28, 2015, has expired.

20. Because Defendant failed to comply with the FOIA time limit provisions, Plaintiff has exhausted its administrative remedies in accordance with 5 U.S.C. § 552(a)(6)(C)(i).

## CAUSES OF ACTION

### First Cause of Action (Production Under the FOIA)

21. Plaintiff asserts and incorporates by reference paragraphs 1-20.

22. Plaintiff properly requested records within Defendant's control and possession in accordance with the FOIA.

1 23. Plaintiff is entitled under the FOIA to access the requested records.

2 24. Defendant wrongfully withheld the requested records in violation of the FOIA.

3 25. Plaintiff exhausted its administrative remedies with regard to the wrongfully  
4 withheld records.

5 **Second Cause of Action**  
6 **(Violation of the APA)**

7 26. Plaintiff asserts and incorporates by reference paragraphs 1-20.

8 27. Plaintiff properly requested records within Defendant's control in accordance  
9 with the FOIA.

10 28. Plaintiff is entitled under the FOIA to access the requested records.

11 29. Defendant's failure to respond to Plaintiff's FOIA Request constitutes agency  
12 action unlawfully withheld and unreasonably delayed, in violation of the APA. Defendant's  
13 failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with  
14 law, and without observance of procedure required by law, all in violation of the APA.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff prays that this Court:

17 a. declare that Defendant's failure to disclose the records requested by Plaintiff is  
18 unlawful;

19 b. enjoin defendant from withholding and order Defendant to disclose the  
20 requested records to Plaintiff, in accordance with 5 U.S.C. § 552(a)(4)(B);

21 c. award Plaintiff its costs and reasonable attorney fees, in accordance with 5  
22 U.S.C. § 552(a)(4)(E); and

23 d. grant such other and further relief as the Court may deem just and proper.  
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1 DATED this 7th day of October, 2015.

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